

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMBROZ NIKAC,

Plaintiff,

ORDER

00 CV 3750 (GBD)(JCF)

-against-

ROCCO POZZI, in his capacity as Commissioner of
the Westchester County Department of Corrections,
WILLIAM DECIUCEIS, in his capacity as Associate
Warden of the Westchester County Jail,
CORRECTIONAL MEDICAL SERVICES, INC., a
Missouri corporation,

Defendants.

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GEORGE B. DANIELS, District Judge:

Pro se plaintiff brings suit under 42 U.S.C. § 1983 against defendants, alleging deliberate indifference to his medical needs, and challenging the conditions of his confinement in violation of his Eighth Amendment rights. He additionally alleges that defendants acted negligently towards him. Defendants move for summary judgment against plaintiff pursuant to Fed.R.Civ.P. 56 for his failure to provide evidence in support of his constitutional claims. To date, plaintiff has not filed any papers in opposition to defendants' motion.

Magistrate Judge James C. Francis, IV issued a Report and Recommendation ("Report") wherein he recommended that the motion for summary judgment be granted. In his Report, Magistrate Judge Francis advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections and would preclude appellate review. Neither party filed objections to the Report, and the time to do so has expired. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

The Court may accept, reject, or modify in whole or part the findings and recommendations set forth within the Report. Fed.R.Civ.P. 72(b); 28 U.S.C. § 636(b)(1)(C)

Where there are no objections, the Court may accept the Report provided there is no clear error on the face of the record. See Nelson v. Smith, 618 F.Supp 1186, 1189 (S.D.N.Y. 1985); see also Heisler v. Kralik, 981 F.Supp. 830, 840 (S.D.N.Y. 1997), aff'd 164 F.3d 618 (2d Cir. 1998).

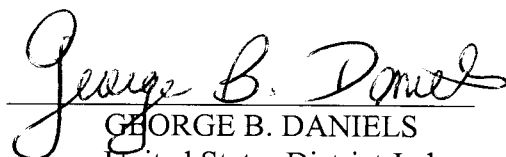
After reviewing the Report, the Court finds that the record is not facially erroneous with respect to the findings and recommendation regarding petitioner's claims.

Plaintiff's complaint alleges that the defendants' were aware of the wretched conditions in the cell block when he was a prisoner held at a Westchester County jail. He claims that the defendants were deliberately indifferent to his serious medical needs and the horrid conditions of his confinement in violation of his rights under the Eighth Amendment. Plaintiff has submitted *no* evidence in support of his constitutional claims. Defendants' summary judgment motion should therefore be granted.

Accordingly, the Court adopts the Report in its entirety and for the reasons stated therein, summary judgment is granted in favor of the defendants, and petitioner's claims are dismissed.

Dated: August 26, 2005
New York, New York

SO ORDERED:


GEORGE B. DANIELS
United States District Judge